S.B. Civil Writ Petition NO.2012/1995

Abdula & Ors. Vs. Board of Revenue & ors.

Date of Order : 10-12-2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sudhir Sharma, for the petitioner/s.
Mr. L.R. Upadhyay, for the respondents.

Heard learned counsel for the parties.

It appears from the facts of the case that the petitioners filed one suit for declaration of their Khatedari rights over the land in dispute in the Court of Assistant Collector, Barmer. The suit was decreed after contest and the petitioners were declared Khatedar tenants of the land in dispute. No appeal was preferred by the State despite the fact that the suit was decreed after notice to the respondent State and respondent State also produced their witnesses in the trial Court.

After about 10 years in the year 1988, an application was submitted by the Tehsildar before the Collector Barmer for making reference under Section 232 of the Rajasthan Tenancy Act for setting aside of the decree dated 26.9.1978. The Tehsildar's application was decided by the learned Additional Collector, Barmer vide order dated

21.10.1992. The District Collector, Barmer in the year 1992, after 14 years referred the matter to the Board of Revenue for consideration. Learned Board of Revenue vide order dated 20.10.1994 set aside the judgment and decree of the trial Court dated 26.9.1978. It is alleged by the State that the land was originally belonging to one Poda and he migrated to Pakistan, therefore, proceedings were initiated under Section 63 (1)(viii) of the Rajasthan Tenancy Act, 1955 and Khatedari rights of said Poda stand extinguished in view of the Section 63 (1)(viii).

It is clear from the facts mentioned above itself that the claim of Khatedari rights of Poda if came to an end of an order dated 24.10.1975, then the petitioners proved their possession over the land in dispute by producing evidence and produced even Jamabandi to show their names in the revenue Court. After considering all facts, the trial Court decreed the suit of the plaintiff.

It will be worthwhile to mention here that the State respondent specifically took a plea that Poda migrated to Pakistan, therefore, his Khatedari rights had extinguished but despite this plea, they failed to prove it before the revenue Court and therefore, the Khatedari rights were granted to the petitioner by the decree of the trial Court. The State did not challenge the decree by filing appeal and the decree become final against the State.

In view of the fact that petitioners are in possession since long and they obtained the decree from competent Court after contest and the State failed to produce sufficient evidence even to prove the extinguishment of Khatedari rights of the person who migrated to Pakistan, then there was no reason for making the reference against the decree dated 26.9.1978 in the year 1992. The petitioners are in possession of the land in dispute is not in dispute and this Court also granted ad-interim stay order in favour of the petitioners on 14.7.1995 and the stay order was confirmed vide order dated 19.1.1996.

In view of the above, the writ petition deserves to be allowed and the order passed by the Board of Revenue deserves to be set aside as the reference itself was made after such an inordinate delay.

Therefore, the writ petition is allowed and the order of Board of Revenue dated 20.10.1994 is set aside.

[PRAKASH TATIA],J.

Praveen